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09/737,050	12/14/2000	Christopher Tate	583-1044	7139
23644	7590	11/30/2006	EXAMINER	
BARNES & THORNBURG LLP			SHELEHEDA, JAMES R	
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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/737,050
Filing Date: December 14, 2000
Appellant(s): TATE ET AL.

MAILED
NOV 30 2006
Technology Center 2600

Tate et al.
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 9/18/06 appealing from the Office action
mailed 3/13/06.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

6,201,536	Hendricks et al.	3/2001
6,564,381	Hodge et al.	5-2003
5,701,582	DeBey	12-1997
5,724,646	Ganek et al.	3-1998
6,304,578	Fluss	10-2001

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1, 3, 10, 12, 14, 18, 20, 22 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hendricks et al. (6,201,536) in view of Hodge et al. (6,564,381). This rejection is set forth in a prior Office Action, mailed on March 13, 2006.

Claims 2, 11, 15, 19 and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hendricks et al. (6,201,536) and Hodge et al. (6,564,381) and further in view of Debey et al. (5,701,582). This rejection is set forth in a prior Office Action, mailed on March 13, 2006.

Claims 4, 13, 17, 21 and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hendricks et al. (6,201,536) and Hodge et al. (6,564,381) and further

in view of Ganek (5,724,646). This rejection is set forth in a prior Office Action, mailed on March 13, 2006.

Claims 5, 6 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hendricks et al. (6,201,536) in view of Hodge et al. (6,564,381) and Fluss (6,304,578). This rejection is set forth in a prior Office Action, mailed on March 13, 2006.

Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hendricks et al. (6,201,536), Hodge et al. (6,564,381) and Fluss (6,304,578) and further in view of Ganek (5,724,646). This rejection is set forth in a prior Office Action, mailed on March 13, 2006.

Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hendricks et al. (6,201,536), Hodge et al. (6,564,381) and Fluss (6,304,578) and further in view of Debey (5,701,582). This rejection is set forth in a prior Office Action, mailed on March 13, 2006.

(10) Response to Argument

- a. On page 8, of the appeal brief, appellant states that the operations center, 202, does not qualify as a "computer that handles requests for data, email, file transfers, and other services from other computers" and thus does not qualify as a "server."

In response, Hendricks specifically **explicitly** discloses wherein the operations center, 202, will handle *requests for content* and then provide the

content to other computers, in response to the requests (see Hendricks at column 35, lines 6-20), thus clearly meeting appellant's definition of a "server".

b. In response to appellant's arguments on pages 8-9, in regards to the teachings of Hendricks, the current claims require that the distribution server generate at least a first and second onward data stream in response to control data received from the content providing server. This is clearly taught by Hendricks as the operations center provides a control signal which dictates the NVOD schedule at the local headend (column 8, lines 31-43 and column 34, lines 32-59).

Furthermore, the claim requires that the streams be offset in time with respect to each other by an offset value *indicated* in the control data. This is clearly taught by Hendricks as the operations center provides the entire broadcast schedule, including **start times** of the video programs (column 8, lines 31-43 and column 34, lines 32-59). As the control data clearly indicates the staggered start times of the NVOD broadcast (column 8, lines 31-43 and column 34, lines 32-59), it is clearly *indicative* of the offset value between the broadcasts.

As admitted by appellant on pages 9 and 10 of the appeal brief, Hendricks transmits a program schedule with implicit timing offsets. The timing offsets are clearly *indicated* by the staggered start times of the programming. There is no

specific requirement for an offset value to be explicitly recited and transmitted, merely an *indication* of the offset value.

Furthermore, on page 9, lines 14-18, appellant argues that “It is clear that the distribution server applies the offset value to the incoming data stream received or being received at the distribution server in order to generate said at least first and second onward data streams offset in time by the offset amount indicated in the control data.”

In response, it is again noted that appellant’s characterization of the claim language is incorrect. The claims call for **control data** to be utilized to generate the onward data streams, as performed by Hendricks’ broadcast schedule. The claims further call for the offset value to be *indicated* by the control data, as indicated by the staggered start times of Hendricks’ NVOD programming.

The claims do *not* require the distribution server to **apply** the offset value to the incoming data stream, as there is no claim language whatsoever directed towards any supposed use of the offset value. The **only** requirement for the offset value is that it be indicated. The distribution server need not specifically receive, process or “apply” the offset value in any way, as the offset value is merely *indicated* in the control data.

Finally, in response to appellant’s comments on page 10, in regards to what appellant feels is an improvement in their invention over Hendricks, it is

noted that none of these differences are currently claimed. As the current claim language does not require or suggest transmitting **only** an offset value, as opposed to a broadcast schedule, and the processing and utilizing said transmitted offset value to produce the output data streams, appellant's arguments are moot.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

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JS

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